

REMARKS

Claims

Claims 37, 41, 44–47 and 55 are currently under examination with claims 38–40, 42, 43, 48–54 and 56–57 withdrawn from consideration due to restriction/election. Claim 58 is cancelled without prejudice or disclaimer.

Claims 59-67 are added by this paper.

Claim amendments

Claim 37, in its amended form, recites the structural features of the polypeptides of the instant invention. Support for the amendment can be found in, for example, the paragraphs spanning page 8, line 15 to page 9, line 15 of the originally-filed specification. See also, original claim 3 and the disclosure contained in the sequence listing page. Support for the RNA molecules claimed herein can be found in the Examples section of the specification. Additionally, given the disclosure of the cDNA sequences encoding the claimed polypeptides, the claimed RNA sequences and sequences complementary thereto can be “at one envisaged.” Explicit disclosure thereof is not necessary. See, *In re Petering*, 301 F.2d 676, 133 USPQ 275 (CCPA 1962). Support for the functional activity of the polypeptides recited therein can be found in page 18, lines 20-30 of the originally-filed specification.

Claim 59 recites the subject matter cancelled from claim 41.

Claims 60-61 is supported by the disclosure contained in, for example, page 18, lines 20-30 in view of the disclosure contained in page 7, lines 10–26 of the originally-filed specification.

Claims 62-64 recite the subject matter cancelled from claim 45.

Claims 65-66 recite the subject matter cancelled from claim 47.

New claim 67 is supported, for example, by the disclosure contained in page 23, lines 12–19 of the originally-filed specification. See also, amended claim 37.

It is respectfully submitted that the claim amendments do not raise new matter. Entry thereof is earnestly solicited.

IDS

Applicants are in the process of obtaining the non-patent literature references cited in the disclosure section of the specification.

The Examiner is requested to old the objection in abeyance until such can be furnished. See, MPEP §714.02 (b).

Specification

The abstract and the title have been amended, rendering the objection thereof moot.

Applicants respectfully traverse the requirement that the specification contain discrete headers. As explicitly stated under 37 CFR §1.77 (c) “The text of the specification sections defined in paragraphs (b)(1) through (b)(12) of this section, if applicable, should be preceded by a section heading in uppercase and without underlining or bold type.” Moreover, MPEP § 608.01, the sections of the specification are merely “preferred” and not mandatory as alleged in the Office Action.

Withdrawal of the objection is respectfully requested.

Claim objections

The Examiner is thanked for her careful review of the claims. The forgoing amendments render the objection of the claims moot.

Withdrawal of the objection is respectfully requested.

Rejections under §101

Use claims have been amended to US process claims, rendering the rejection thereof moot. Withdrawal of the rejection is respectfully requested.

Rejections under §112, ¶2

Applicants respectfully disagree with the PTO’s contention that recitation of DG153 and DG177 as the name of polypeptide/polynucleotide molecules renders the claims indefinite. As explicitly stated under MPEP §2173.05(a) new terminology is acceptable as long as (a) the meaning of the term is apparent (b) the meaning of the term is clear and precise (c) when used in contrary to their ordinary meanings, such is clearly defined in the written description. It is submitted that in view of the detailed disclosure spanning pages 5 and 6 of the instant specification, further in view of the references cited therein, the meanings of the term(s) are explicitly provided in the present specification. The PTO has not established that the terms are used in contrary to their ordinary meanings. As such, the objection of the specification and the rejection of the claims based on this contention is legally misplaced. Moreover, it is now a well-established axiom in patent law that a patentee or applicant is free to be his or her own lexicographer, a patentee or applicant may use terms in a manner contrary to or inconsistent with one or more of their ordinary meanings if the written description clearly redefines the terms. See, e.g., *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999), *Hormone Research Foundation Inc. v. Genentech*

Inc., 904 F.2d 1558, 15 USPQ2d 1039 (Fed. Cir. 1990).

Withdrawal of the rejection is respectfully requested.

Rejection under 35 U.S.C. § 102(b)

Claim 37 and the claims dependent thereon are rejected under 35 U.S.C. §102(b) as allegedly anticipated by Gerber (US patent publication No. 2002/0132978; published: September 19, 2002). The Office Action alleges that Gerber's SEQ ID NO: 6 is 100% identical to the disclosed amino acid sequence of DG153. Gerber's protein is longer than the instant DG153 protein of SEQ ID NO: 2. See, the enclosed Exhibit A. As such, Gerber fails to teach or suggest a pharmaceutical composition consisting essentially of the presently claimed polypeptides and a diagnostic or a therapeutic composition comprising such polypeptides. The cited reference is also silent regarding the use thereof in the treatment of pancreatic diseases, metabolic syndrome, metabolic disorders and dysfunctions, or for controlling the function of a gene or a gene product that is influenced or modified by said polypeptide. As such, the rejection cannot stand. Withdrawal of the rejection is respectfully requested.

In view of the above remarks, favorable reconsideration is courteously requested. If there are any remaining issues which could be expedited by a telephone conference, the Examiner is courteously invited to telephone counsel at the number indicated below.

The Commissioner is hereby authorized to charge any fees associated with this response to Deposit Account No. 13-3402.

Respectfully submitted,

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